IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 787 OF 1990

Smt.Medha Mahesh Chilakwad .....
Petitioner
V/s
Birla College of Arts, Science & Commerce, Kalyan & Ors....
Respondents.

Mr.Susheel Mahdeshwar, Adv. for the petitioner.

Mr.Rahul Nerlekar i/by Mr.L.M.Nerlekar, Adv. For the respondents 1 to 3.

CORAM: A.P. DESHPANDE, J.
29.3.2007

ORAL JUDGMENT:

1. By the present petition the petitioner questions the legality and validity of the judgment and order passed by the Presiding Officer, College Tribunal dismissing the appeal filed by the petitioner calling in question the validity of order of termination.

2. The petitioner was appointed initially for academic sessions 1986-87 as a lecturer in the respondent-college at which point of time the petitioner was possessing qualification of M.A. Though she had passed the written examination of M.Phil degree, for non completion of dissertation work her M.Phil degree was withheld. The initial appointment in academic sessions 1986-87 was in a leave vacancy on purely temporary basis. The initial order

of appointment is dated 25.6.1986 and the said order categorically states that the petitioner has been appointed in leave vacancy on temporary basis upto 3.4.1987. After completion of academic session the petitioner was yet again continued in service for academic session 1987-88 by issuing an order of continuation. The order of continuation is dated 1.7.1987 and the said order as well reiterates the petitioner's appointment being temporary in nature and against a reserved post. The appointment order further provides that the services of the petitioner could be terminated without assigning any reason and without any notice. Be it as it may, by efflux of time at the end of academic session 1987-88 the petitioner stood terminated from service. Aggrieved by termination of service, the petitioner filed an appeal before the College Tribunal. Main bone of contention of the petitioner before the Tribunal was that though a candidate belonging to backward class was not available for being appointed in the post held by the petitioner, still she was terminated from service illegally and mala fide. The Tribunal has dismissed the appeal by holding that the petitioner's appointment was temporary in nature and the termination of service was in accordance with one of the terms of conditions of service. It is further pointed out by the Tribunal that as the appointment of the petitioner in academic session 1987-88 was against leave vacancy the petitioner cannot claim any right to the post in question. So concluding the Tribunal has dismissed the appeal. The learned counsel for the petitioner has submitted that as the petitioner was appointed against a vacancy reserved for back ward class candidate she could only be replaced by that candidate and she cannot be terminated from service in any other

manner except by her substitution by a candidate belonging to backward category. Per contra, learned counsel for the respondent has submitted that the petitioner had not passed M.Phil examination and did not possess said degree which was the requisite qualification for appointment to the post of lecturer and as the petitioner was not eligible and qualified for being appointed as a lecturer on this count as well the petitioner cannot claim right to the post. It is then pointed out that the vacancy that arose on account of termination of the petitioner has been filled in by appointing one Mr.More who belongs to schedule caste category. No doubt Mr.More came to be appointed in academic session 1989-90 with effect from 4.7.1989 and thus the situation that emerges is that after termination of the petitioner the post was lying vacant for about one year and thereafter a reserved category candidate came to be appointed. The moot question that emerges for consideration is as to whether can the termination of the petitioner be faulted on the ground that immediately a candidate belonging to schedule caste category was not appointed and the answer to the said question is obviously no. In the first place the appointment order issued to the petitioner in academic session 1986-87 and 1987-88 clearly reveal the appointment to be temporary. In the first year the appointment was against leave vacancy and in the second order it was against a vacancy reserved for backward class candidate. The appointment orders categorically mention that the appointment is temporary in nature till the end of academic session and if this be so, then it is crystal clear that the petitioner cannot claim any right to the post. The action of termination of service of petitioner resorted to by the

respondent does not suffer from any illegality. The order passed by the Tribunal does not call for any interference as it takes the correct view of the matter. In the result there being no merit in writ petition same is dismissed. Rule stands discharged with no order as to costs.